

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

VERIFIED ANSWER ,
COUNTERCLAIM AND
DEMAND FOR JURY TRIAL

-v.-

\$42,000 IN FUNDS FORMERLY HELD AT
WESTCHESTER BMW IN THE NAME OF
ELVIN CONCEPCION, AND ANY ALL
PROPERTY TRACEABLE THERETO,

07 CIV 8326 (RPP)

Defendant-in-rem,

GUILLERMO M. CONCEPCION,

Claimant.
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Claimant GUILLERMO M. CONCEPCION, by his attorneys, GREEN &
WILLSTATTER, ESQS., as and for his answer to Plaintiff's "Verified Complaint," dated
September 24, 2007 ("the complaint"), responds upon information and belief as follows:

1. Denies each and every allegation set forth in paragraph 1 except admits that this
action is brought by the United States of America seeking forfeiture of certain funds formerly
held by Westchester BMW.

2. Denies knowledge or information sufficient to form a belief as to the truth of the
allegations set forth in paragraph 2.

3. Denies knowledge or information sufficient to form a belief as to the truth of the
allegations set forth in paragraph 3.

4. Denies knowledge or information sufficient to form a belief as to the truth of the

allegations set forth in paragraph 4.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6, except admits that Elvin Concepcion is in custody on pending criminal charges.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7, except admits that there were video cameras installed at the residence.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8, except admits the Elvin Concepcion earned money from his employment at a deli at approximately the weekly rate alleged in the complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations sets forth in paragraph 10 except admits that a Spider Ferrari owned by claimant was sold to Westchester BMW, with Elvin Concepcion acting as agent for this sale, and the proceeds were held by Westchester BMW.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11.

12. Admits the allegations set forth in paragraph 12.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 and specifically denies that any residential property owned by claimant was purchased with funds provided by Elvin or Jose Concepcion or put in claimant's name by Elvin or Jose Concepcion.

14. With respect to paragraph 14 of the complaint, repeats and reaffirms the responses to paragraphs 1 through 13 of the complaint.

15. Denies each and every allegation set forth in paragraph 15.

16. Denies each and every allegation set forth in paragraph 16, except admits the language of any statutory provisions to the extent correctly quoted.

17. Denies each and every allegation set forth in paragraph 17, except admits the language of any statutory provisions to the extent correctly quoted.

18. Denies each and every allegation set forth in paragraph 18, except admits the language of any statutory provisions to the extent correctly quoted.

19. Denies each and every allegation set forth in paragraph 19, except admits the language of any statutory provisions to the extent correctly quoted.

20. Denies each and every allegation set forth in paragraph 20, except admits the language of any statutory provisions to the extent correctly quoted, and specifically denies that portion of the paragraph which purports to quote certain language from the cited statute which is not in fact contained within that statute.

21. Denies each and every allegation set forth in paragraph 21.

22. Denies each and every allegation set forth in paragraph 22, except admits the

language of any statutory provisions to the extent correctly quoted.

23. Denies each and every allegation set forth in paragraph 23.

AS AND FOR A FIRST DEFENSE

24. The property that is the subject of this forfeiture action is the proceeds of the sale of an automobile owned by and registered to claimant and which automobile he had come into possession and ownership by lawful purchase with his own funds and finances which were not the proceeds of crime or criminally derived property.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

25. The complaint fails to state a cause of action upon which plaintiff's requested relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

26. Plaintiff's complaint is legally insufficient in that plaintiff's allegations are conclusory, speculative, non-evidentiary and insufficient to establish probable cause to believe that the subject property is subject to forfeiture.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

27. Plaintiff's complaint was not timely filed.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

28. The subject property was unlawfully seized and is unlawfully possessed by the government in that a) law enforcement agents directed Westchester BMW to withhold

payment of the subject funds to claimant prior to instituting any lawful process; b) the funds were initially seized improperly by the abuse of the grand-jury subpoena process in that said funds were seized without a warrant and pursuant to a New York grand jury subpoena duces tecum signed by a special narcotics prosecutor for the City of a New York; c) the seizure of said funds by the state was without probable cause or a valid warrant; d) there was no turnover order by a court of competent jurisdiction so as to authorize the turnover of property held by New York to the United States government; and e) any warrant authorizing seizure or retention of said property by the government was issued without probable cause and tainted by the primary illegality.

AS AND FOR A FIRST COUNTERCLAIM

29. Plaintiff has and continues to cause damages to claimant for attorney's fees and costs relating to the defense of this matter and, accordingly, claimant is entitled to reasonable attorney's fees and litigation costs pursuant to 28 U.S.C. §2465(b)(1)(A).

AS AND FOR A SECOND COUNTERCLAIM

30. Claimant should be awarded \$50,000, that being the proceeds of the vehicle sale as stated in the government complaint, plus interest.

JURY DEMAND

31. Defendant hereby demands trial by jury of all issues in the complaint, answer and counterclaims.

CONCLUSION

WHEREFORE, claimant GUILLERMO M. CONCEPCION respectfully requests that this Court dismiss the complaint and award judgment to claimant of the seized property with interest together with attorneys' fees and costs.

Dated: White Plains, New York
October 26, 2007



GREEN & WILLSTATTER

By: THEODORE S. GREEN

Attorneys for Claimant

200 Mamaroneck Avenue, Suite 605

White Plains, New York 10601

(914) 948-5656

VERIFICATION

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:
SOUTHERN DISTRICT OF NEW YORK)

GUILLERMO M. CONCEPCION, being duly sworn, deposes and says that he is the claimant in this action, that he has read the foregoing complaint and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

The sources of deponent's information and the ground of his belief are his own personal knowledge and observations and review of documents prepared by others.

GUILLERMO M. CONCEPCION

Sworn to before me this
26th day of October, 2007


NOTARY PUBLIC

THEODORE S. GREEN
Notary Public, State of New York
No. 02GR5017134
Qualified in Westchester County
Commission Expires August 30, 2009